

FRANK LUJAN

IBLA 76-393

Decided April 29, 1977

Appeal from decision of Director, Bureau of Land Management, dismissing a protest against the position of a quarter section corner reestablished during a dependent resurvey. (Group No. 695, New Mexico.)

Decision set aside; hearing ordered.

1. Secretary of the Interior! ! Public Lands: Generally! ! Surveys of Public Lands: Authority to Make Surveys of Public Lands: Dependent Resurveys

The Secretary of the Interior may cause to be made such resurveys or retracements of the rectangular system of surveys of public lands as he may deem essential to mark the boundaries of the remaining public lands.

2. Rules of Practice: Hearings! ! Surveys of Public Lands: Dependent Resurveys

The dependent resurvey is designed to accomplish a restoration of what purports to be the original conditions according to the record, based, first, upon identified existing corners of the original survey and other recognized and acceptable points of control, and, second, upon the restoration of missing corners by proportionate measurement in harmony with the record of the original survey. Where an appellant who protests a dependent resurvey presents evidence which questions whether, in fact, the Bureau of Land Management accurately located a

quarter section corner and three certified surveyors agree with appellant, a hearing will be ordered for resolution of the factual issue of location of the quarter corner.

3. Rules of Practice: Burden of Proof! ! Surveys of the Public Lands: Dependent Resurveys

Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

APPEARANCES: M. L. Armijo, Jr., Esq., Las Vegas, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Frank Lujan appeals from a decision of the Director, Bureau of Land Management (BLM), signed by the Chief, Division of Cadastral Survey, dated November 25, 1975, dismissing his protest against the location of the quarter corner common to sections 8 and 17 in T. 17 N., R. 24 E., N. Mex. Prin. Mer., New Mexico, as reestablished in 1970 by the Bureau in a dependent resurvey of a portion of the Fourth Standard Parallel North in R. 24 E., and a portion of the subdivisional lines in T. 17 N., R. 24 E.

Under Special Instructions issued June 2, 1970, the State Director for New Mexico, BLM, authorized and directed a resurvey of the boundaries of sections 18, 19, 20, 21, 29, 30 and 31 in T. 17 N., R. 24 E., together with any necessary examination, retracements, and restoration of points of control consistent with the U.S. Department of the Interior, Bureau of Land Management, Manual of Instructions for the Survey of Public Lands of the United States, § 400 (1947) (hereinafter cited as Manual, 1947). 1/ The township

1/ The State Director is authorized to issue special instructions for resurveys of the boundaries of public lands pursuant to BLM Order No. 701, July 23, 1964.

had been surveyed by one Halden R. Warner in 1880. The resurvey was made between June 15 and August 13, 1970, by Duane E. Olsen, Supervisory Cadastral Surveyor. Olsen's field notes show reestablishment of the corner common to sections 7, 8, 17 and 18 by proportionate distance. It appears that the quarter corner common to sections 8 and 17 was reestablished from what Olsen concluded was the best available evidence and this corner was then used in establishing the corner common to sections 7, 8, 17 and 18.

Olsen's field notes recite:

From the 1/4 sec. cor. of secs. 8 and 17, monumented by a basalt stone, 12x6x4 ins., set firmly in a mound of stone, with apparent, but illegible marks on the N. face. This cor. location was described by local residents as being up the slope from small wooden bridge over irrigation canal.

At the corner point

Set an iron post, 30 ins. long, 2 1/2 ins. diam., 22 ins. in the ground, with brass cap marked

T17N R24E

1/4 S8
 S17

1970

from which

A cedar, 5 ins. diam., bears N. 55 [degrees] E., 20 lks. dist., marked X
BT.

Bury the original corner stone alongside the iron post and raise a mound of stone, 2 ft. base, 1 1/2 ft. high, N. of the corner.

N. 75 [degrees] 39' W., between sections 8 and 17.

Descend W. slope of mesa.

Appellant protested the reestablished situs of the quarter corner as being many hundred feet south and several hundred feet east of the locally accepted location of this corner. The Director, BLM, dismissed his protest.

The appeal presents three general questions:

(a): in the first instance, whether or not the Bureau of Land Management had lawful authority to conduct the dependent resurvey of 1970 which is the subject matter of this appeal;

(b): assuming that question (a) is resolved in the affirmative, whether or not the fixing or re! fixing or tracing or retracing of the dividing line between Sections 8 and 17, T. 17 N., R. 24 E., N.M.P.M. was a legally! valid part of the total 1970 dependent resurvey given the assumed fact that the federal government no longer owns any land on either side of the said dividing line;

and finally

(c): assuming that both questions (a) and (b) are resolved in the affirmative, whether said 1970 dependent resurvey was in point of fact accurate, correct and strictly conformable to the original 1880 surveys.

In response to the first two questions, the government did have the authority to conduct the dependent resurvey. This authority is set forth in 43 U.S.C. § 772 (1970), which provides as follows:

The Secretary of the Interior may, as of March 3, 1909, in his discretion cause to be made, as he may deem wise under the rectangular system on that date provided by law, such resurveys or retracements of the surveys of public lands as, after full investigation, he may deem essential to properly mark the boundaries of the public lands remaining undisposed of: Provided, That no such resurvey or retracement shall be so executed as to impair the bona fide rights or claims of any claimant, entryman, or owner of lands affected by such resurvey or retracement:

* * *

The Special Instructions of June 2, 1970, authorized and directed a resurvey of the boundaries of sections 18, 19, 20, 21, 29, 30 and 31 in T. 17 N., R. 24 E. The quarter corner common to sections 8 and 17 was a control point in reestablishing the corner common to secs. 7, 8, 17, 18 (from which the resurvey of sec. 18 proceeded.) The Master Title Plat of T. 17 N., R. 24 E., N.M.P.M., maintained by BLM, shows that the federal government does in fact hold property within sec. 17 abutting the area which was resurveyed.

[2, 3] Appellant's third issue warrants greater scrutiny. The dependent resurvey is designed to accomplish a restoration of what purports to be the original conditions according to the record, based, first, upon identified existing corners of the original survey and other recognized and acceptable points of control, and, second, upon the restoration of missing corners by proportionate measurement in harmony with the record of the original survey. This type of resurvey is applicable to those cases showing fairly concordant relation between conditions on the ground and the record of the original survey. Titles, areas, and descriptions should remain absolutely unchanged in the typical dependent resurvey. Manual, 1947; Alfred Steinhauer, 1 IBLA 167, 171 (1970).

A dependent resurvey consists of a retracement and reestablishment of the lines in the original survey in their true original positions according to the best available evidence of the positions of the original corners. U.S. Department of the Interior, Bureau of Land Management, Manual of Instructions for the Survey of the Public Lands of the United States, § 6-4 (1973) (hereinafter cited as Manual, 1973); Henry O. Woodruff, 24 IBLA 190, 192 (1976); Orion L. Fenton, 1 IBLA 203, 207 (1971); Alfred Steinhauer, *supra*.

In his statement of reasons and exhibits, appellant questions whether the 1970 dependent resurvey was conducted in conformity with the Manuals to accurately retrace the original 1880 survey. The information presented by appellant specifically questions whether, in fact, the restored quarter corner between sections 8 and 17 was properly placed. Appellant contends that the 1970 dependent resurvey was not accurate in certain vital particulars, and that the crucially important matter of relocating lost or obliterated corners of the original 1880 survey was not handled in a manner consistent with best surveying standards and practices. Appellant states that the specimen certification appearing in the 1947 and 1973 Manuals in Appendix VIII at page 564 and in Appendix II at page 284 respectively, is specific in requiring that certification be made by the surveyor that "the lines of the original survey were retraced." Appellant contends that Olsen did not find the original quarter section corner common to sections 8 and 17 and that the quarter section corner between sections 8 and 17 which he does identify and describe at page 16 of his field notes is not, in fact, situated at the location determined by the 1880 surveyors, nor is the stone, he recognizes, the "malpais" monument emplaced by the 1880 surveyors. Appellant's contention that Olsen's report is not accurate is based on the following: the 1880 record of the subject quarter section corner is "malpais rock 16x14x12 in. mound of rock marked 1/4 on N. side of 1/4 sec. cor." Olsen's field notes state that he found "a basalt stone, 12x6x4 ins., set firmly in a mound of stone, with

apparent, but illegible marks on the N. face." Appellant questions the difference in size between the rock placed in 1880 (16x14x12 inches) and the rock accepted by Olsen in 1970 (12x6x4 inches).

Appellant states that malpais and basalt are volcanic rocks having hard formations which do not easily deteriorate, and suggests that it is unlikely that any markings on such a rock would have been effaced by the elements during the period from 1880 to 1970. Appellant believes that the original 1880 "malpais" rock with its markings was not recovered by Olsen. Appellant says that the basalt stone found by Olsen could have been a moved monument, a monument set by someone other than the 1880 surveyor, no monument at all, or perhaps a stone from an old corral built by an old time resident of the area.

According to appellant, it is possible that the original 1880 monument was washed out by a severe flood of the Canadian River in 1904, further, one of the surveyors submitting evidence on behalf of appellant states that he found considerable evidence of rockslides in the area where the surveyor believes the original North quarter corner of section 17 should have been found.

Regarding the corner in question, Olsen states in his field notes: "This corner was described by local residents as being up the slope from small wooden bridge over irrigation canal." Appellant, who is over 80 years old and has lived in the area virtually all of his life, shows in his protest that residents of the Sabinoso, New Mexico, area, at the appropriate time protested that "up the slope from the wooden bridge" could not reasonably be the general area for the true location of the quarter corner since this location would totally ignore many traditional boundaries of patented "40s" which have been fenced and respected by area residents for many years. Appellant points out that Olsen does not name the local residents to whom he refers.

Appellant claims that this case involves a lost or obliterated corner because the stated quarter corner was not found where it was originally placed in 1880.

Appellant's position that there is a factual question about the location of North quarter corner of Section 17 and its true location is supported by three New Mexico surveyors who are well acquainted with the area. It is the opinion of these surveyors that the Olsen 1970 North quarter corner of section 17 is wrong, is mislocated in terms of the original 1880 field notes, and the accepted stone departs markedly in description from the 1880 "malpais" record monumentation. One of these surveyors, John C. Drissel, Professional Engineer and Land Surveyor, licensed in New Mexico and Arizona, summarized his findings as follows:

The variations between the two records as set forth above indicate that the 1970 dependent survey did not exercise due care in the survey. Careful consideration of monumentation standards was not followed. Too many discrepancies in the type, size and markings on the stones exist to accept all of them. This is especially true with respect to the SW and NW Corners of Section 21, and most importantly, the N 1/4 corner of Section 17.

The N 1/4 corner of Section 17 fails in all categories: the type of stone, size, and no markings. Also the bearings and distances vary greatly from the original survey. In fact, in the undersigned's opinion, the 1970 survey did not follow the 1880 survey line from the NW corner to the N 1/4 corner of Section 17.

The remaining lines of Section 17 should be surveyed to check out the total distortion of the section that this 1970 partial survey left unanswered.

In the opinion of the undersigned surveyor, this dependent survey should not be considered ready for filing because the survey is not completed. Further review of the original survey lines are necessary before acceptance of certain corners that will cause large distortions in the surveyed sections and adjacent sections.

In light of the evidence submitted by appellant which questions BLM's location of the quarter corner in issue, we find that a hearing is appropriate. See Joe S. Dent, 18 IBLA 375 (1975); Utah Power and Light Company, 6 IBLA 79, 79 I.D. 397 (1972). Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. Appellant, in challenging the Government resurvey, has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey. Henry O. Woodruff, *supra*, at 193 (1976). Therefore, we order a hearing pursuant to 43 CFR 4.415 for presentation of evidence relating to the propriety of the resurvey of the line between secs. 8 and 17, and to the location of the quarter corner common to secs. 8 and 17, T. 17 N., R. 24 E., N. Mex. Prin. Mer. At the conclusion of the hearing, the Judge will prepare a recommended decision, serving it on the parties, and allowing each a period of 30 days from receipt to submit comments thereon to this Board.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Director, BLM, is set aside and the case is referred to the Hearings Division, Office of Hearings and Appeals, for assignment to an Administrative Law Judge.

Douglas E. Henriques
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Martin Ritvo
Administrative Judge

